



**International Convention
on the Protection of the
Rights of All Migrant
Workers and Members
of Their Families**

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COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES

Tenth session

SUMMARY RECORD OF THE 98th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 20 April 2009, at 10 a.m.

Chairperson: Mr. EL JAMRI

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The meeting was called to order at 10.10 a.m.

OPENING OF THE SESSION

1. The CHAIRPERSON declared open the tenth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and invited the representative of the United Nations High Commissioner for Human Rights to make a statement before the Committee.

STATEMENT BY THE REPRESENTATIVE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

2. Ms. CONNORS (Representative of the United Nations High Commissioner for Human Rights) said that, as she spoke, the High Commissioner for Human Rights was opening the Durban Review Conference. The Durban Declaration and Programme of Action specifically called upon all States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and she expected the Durban Review Conference to result in renewed calls for ratification. As a side event, the Office of the United Nations High Commissioner for Human Rights (OHCHR) was organizing a panel discussion on the economic, social and cultural rights of migrants.

3. In order to better promote a rights-based approach to migration, the High Commissioner had designated Mr. Ngonlardje Mbaidjol, former director of the OHCHR office in New York, as her senior adviser on migration issues, with the aim of raising the visibility and impact of OHCHR in the international migration debate and increasing the number of ratifications of the Convention. The recent accession to the Convention by Rwanda and the Niger had brought the number of States parties to 41, as a result of which the membership of the Committee would expand to 14 in January 2010.

4. Noteworthy developments within the United Nations human rights system included the adoption in December 2008 by the General Assembly of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, establishing a procedure for complaints about violations of the rights enshrined in the Covenant. The Committee on the Rights of Persons with Disabilities had been established and had met for the first time in February 2009 in Geneva, meaning that the Committee on Migrant Workers was no longer the youngest treaty body in the United Nations system. She hoped that close links would be established between the two committees, given the overlap between the issues of disability and migration. The eighth inter-committee meeting of the human rights treaty bodies had been held in December 2008, and had focused on the harmonization of working methods. Mr. El Jamri and Ms. Poussi had represented the Committee at the meeting.

5. The fourth session of the Working Group on the Universal Periodic Review had taken place in February 2009, bringing the total number of countries reviewed to 64. The Working Group had confirmed at the session that the rights of migrants figured prominently in the universal periodic review process and that the recommendations made by treaty bodies were fundamental to that process. Human rights treaty bodies were encouraged to follow up on commitments and pledges made by States parties as well as on the recommendations that emerged from the universal periodic review. All treaty bodies were encouraged to consider more

carefully their position in relation to the universal periodic review process. Lastly, she welcomed the round table on the right to freedom of association for migrant workers, which the Committee planned to hold on 1 May, International Labour Day.

ADOPTION OF THE AGENDA (CMW/C/10/1)

6. Mr. BRILLANTES said that, while he endorsed the agenda as it stood, it would be useful if the Committee could discuss at some point the repercussions of the global economic crisis on migrant workers.
7. The CHAIRPERSON said that Committee members could broach that issue in their review of activities since the last session.
8. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS

Adoption of the programme of work (document without a symbol, distributed in the meeting room in English only)

9. The draft programme of work was adopted.

Organization of work

10. The CHAIRPERSON welcomed the information provided by the Representative of the United Nations High Commissioner for Human Rights, particularly the news concerning the 41 ratifications of the Convention and the subsequent enlargement of the Committee's membership, and thanked OHCHR for its ongoing efforts to support and promote the Convention. He agreed that it was necessary to establish close links with the Committee on the Rights of Persons with Disabilities.

11. Ms. MERICCO (Caritas Internationalis) suggested that the Committee should consider holding a day of general discussion during its October 2009 session, on the theme of the human rights of migrant domestic workers. The International Labour Organization was already preparing a convention on the protection of domestic workers, and the Committee's contribution to that preparatory work was essential, given that most domestic workers were migrants. In Saudi Arabia, for example, there were approximately 1.5 million domestic workers, primarily from Indonesia, the Philippines and Sri Lanka. Many domestic workers in France and Italy were also from the Philippines.

12. She invited all members of the Committee and interested NGOs to an information briefing entitled "Needed and exploited: the invisible suffering of migrant domestic workers" to discuss, inter alia, the proposed day of general discussion.

13. Mr. BINGHAM (International Catholic Migration Commission), speaking in his capacity as president of the International NGO Platform on the Migrant Workers' Convention, expressed his support for the proposal made by the representative of Caritas Internationalis for a day of general discussion on the theme of the human rights of migrant domestic workers.

14. The CHAIRPERSON said that the Committee paid serious attention to the issue of the rights of domestic workers in its work, and would certainly consider the proposal for a day of general discussion. He expressed his appreciation for the work carried out by the International NGO Platform on the Migrant Workers' Convention.

Review of activities since the last session

15. Mr. ALBA said that to mark the sixtieth anniversary of the Universal Declaration of Human Rights, the Human Rights Centre attached to the Law Faculty of the University of Chile had published a book entitled Derechos Humanos Hoy (Human Rights Today). The Centre had asked him to contribute comments on "human rights and immigration" and "the phenomenon of non-citizens". He had also recently written an article entitled "The role of international human rights instruments" for a Brazilian journal, in which he had focused on the Convention. He had been invited to become a member of the International Advisory Committee of the Global Forum on Migration and Development, a civil society organization that would be holding a meeting in November 2009 in Athens, Greece.

16. Ms. CUBIAS MEDINA said that a group of activists, including herself, had followed the route used by migrants travelling across the border from Guatemala to Mexico. It had proved a very daunting experience entailing major risks. There was a criminal mercenary army (Los Zetas) operating on the Mexican border, which robbed migrants, kidnapped them and used them in the drug trade and for organ trafficking. The Mexican Government was doing its utmost to protect the migrants' rights. For instance, the Mayor of Chiapas had created a special prosecutor's office and a mounted police force for the purpose. A large number of arrests had been made but the criminal network was enormous. The route was used not just by migrants from Central and South America but also by African refugees who had been driven from their own countries by social, ethnic or gender violence.

17. Ms. POUSSI commented on the eighth inter-committee meeting of the human rights treaty bodies in December 2008, which she had attended with the Chairperson. The meeting had dealt with the harmonization of working methods, revised guidelines for reporting by States parties and the universal periodic review mechanism. The treaty bodies had been urged to complete revised treaty-specific guidelines by the end of 2009, so that States parties could begin to apply them in 2010. The possibility of setting up a working group to identify best practices in respect of follow-up to concluding observations had been discussed. With regard to the universal periodic review mechanism, it had been agreed that the treaty bodies should continue to refer to the outcome of the review during their dialogue with States parties and in their concluding observations. The inter-committee meeting had stressed the need to enhance the profile of the treaty bodies, which were encouraged to adopt a media strategy.

18. Mr. KARIYAWASAM said that he had represented the Committee at the Forum on Minority Issues held on 15 and 16 December 2008 and would report on the outcome, which had been very encouraging, later in the session.

19. Welcoming the fact that there were now 41 States parties to the Convention, he reiterated the need to promote ratification among receiving countries so that the Convention became more meaningful for migrants worldwide. While commending the efforts of the High Commissioner and the secretariat in that regard, he said that he would welcome an even more determined effort to broaden the base of the Convention.

20. Mr. BRILLANTES said that a diplomatic forum had been convened by Foreign Affairs and International Trade Canada in December 2008, to which all heads of diplomatic missions had been invited. Members of the Canadian Cabinet had reported to the forum on new developments in the country. Responding to the address by the Minister of Citizenship, Immigration and Multiculturalism, he had asked whether Canada intended to ratify the Convention. The Minister had replied that he would set up a group of experts to look into the matter and report back to him.

21. The CHAIRPERSON said that he had been invited to attend the 17th meeting of the Economic and Environmental Programme of the Organization for Security and Cooperation in Europe (OSCE) in January 2009, at which migration issues and, in particular, the new concept of “circular migration” had been discussed. There was a strong demand in European countries for migrant workers, but the prevalence of xenophobic attitudes meant that they were reluctant to commit themselves to longer-term immigration. Migrants could therefore obtain short contracts in several different countries but were constantly compelled to move on or, alternatively, to return to their countries of origin. Their rights were thus constantly eroded.

22. Some advocates of circular migration actually argued that migrant workers should be paid wages equivalent to those in their country of origin rather than those paid in the host country. In France the “Haute autorité de lutte contre les discriminations et pour l’égalité”, an advisory administrative authority on action to counter discrimination and promote equality, had recently denounced an agreement between employers in the Bouches-du-Rhône department and the Ministry of Labour, under which lower wages could be paid to Moroccan seasonal workers than to local French workers. The advisory authority had recommended that the situation of such migrants should be regularized, that they should be compensated for the shortfall in wages and that they should be allowed to apply for permanent residence.

23. He had also participated in an international discussion organized by the International Organization for Migration in March 2009 on “Effective respect for the human rights of migrants: a shared responsibility”. The meeting had noted that a variety of stakeholders were involved in migrant issues in countries of origin, countries of transit and host countries, for instance employers, intermediaries, employment agencies and travel agencies. In his own statement, he had suggested a methodology for ensuring respect for migrants’ rights, in particular: promoting contacts among all authorities and stakeholders; operating within a national or international legal framework that guaranteed respect for such rights; arranging for coordination prior to decision-making and developing information systems; capacity-building among all actors at every level; registration of all mechanisms and actions with a view to ensuring their sustainability; and taking account of migrants’ rights as a matter of course in public policymaking.

24. At the end of 2008 he had organized the first meeting of international councils on migration in Morocco. Eighteen councils had participated and had decided to institutionalize the event. The second meeting would be held in Spain.

25. Lastly, he had recently attended a meeting in Spain with the Spanish Minister of Labour and the Minister of State for Migration, at which the former had announced that he was appealing to member States of the European Union to ratify the Convention.

26. Mr. KARIYAWASAM expressed support for the proposal to discuss the impact of the credit crisis and the downturn in the global economy on the well-being of migrant workers and their families. States parties must continue to comply strictly with their treaty obligations under the current circumstances.

27. Mr. TAGHIZADE said that, in considering the effects of the financial crisis, it was important for the Committee to take into account in particular the plight of disabled persons. The problems faced by disabled workers had been the subject of a plan of action adopted by the Council of Europe, and the Committee should draw the attention of that and other bodies, including the European Union, to the specific needs of migrant workers affected by disabilities. The Committee could also point out that as populations in host countries aged and more skilled workers were needed to care for the disabled, migrant workers could help to fill the gap.

28. The CHAIRPERSON said that the situation of disabled workers could perhaps be discussed at the next session, once it was more clear how the Committee on the Rights of Persons with Disabilities intended to perform its duties. He suggested that the Committee on Migrant Workers should hold a more in-depth discussion of the effects of the world financial crisis on migrant workers later in the session. Mr. Kariyawasam and Mr. Brillantes could open the discussion with a brief introduction to help the Committee produce a concrete proposal on the subject.

29. Mr. BRILLANTES expressed some doubt as to whether it fell within the Committee's mandate to consider how to mitigate the effects on migrant workers of the world financial crisis, which was, after all, a worldwide phenomenon.

30. Mr. TAGHIZADE said that certain elements of the discussion could be raised during the Committee's forthcoming meeting with States parties.

31. Mr. KARIYAWASAM questioned whether the Committee needed to take half a day to discuss the effects of the world financial crisis on migrant workers: they could be mentioned in the Committee's concluding observations and other documents.

32. The CHAIRPERSON said that the financial crisis had already made itself felt. In Spain, thousands of migrant workers who had received official papers in recent years now faced more stringent requirements for their renewal. They often had to choose between a return to their countries of origin or life as an undocumented foreigner. The Spanish Government had also adopted measures to encourage the return of unemployed migrant workers by providing a financial incentive. It had planned for up to 250,000 participants in the return programme, expecting many of them to be from North Africa, but in the end, just 4,000 had taken advantage

of it, and nearly all of them were from Latin America. The Committee required more information on the effects of the economic crisis if it was to give due consideration to the reports of States parties. A discussion on that topic would help shape the Committee's position and would clarify what information it needed.

The meeting was suspended at 11.30 a.m. and resumed at 11.50 a.m.

Follow-up to communications from States parties

33. The CHAIRPERSON called upon Mr. Alba and Ms. Cubias Medina to inform the Committee about the communications received from the Governments of Mexico and Ecuador, and to propose ways to respond to those communications.

34. Mr. ALBA said that on 17 December 2007 the Constitutional Court of Ecuador had issued a ruling eliminating the need for Ecuadorian citizens to hold an exit permit to leave the country, thus complying with one of the recommendations made by the Committee in its concluding observations issued in 2007 (CMW/C/ECU/CO/1). He proposed that the Committee thank the Government for informing it of the Court's decision, and express the hope that the Government would continue its efforts to bring its national legislation into line with the spirit and provisions of the Convention.

35. Ms. CUBIAS MEDINA said that the communication from the Government of Mexico consisted of a 42-page document that responded in detail to each of the concluding observations previously issued by the Committee. The Committee had expected such information to be included in Mexico's second periodic report, which was due for submission in July 2009. She proposed that the Committee send a communication to the Mexican Government thanking it for its communication and explaining that the Committee would consider its contents to be an integral part of the second periodic report.

36. Mr. KARIYAWASAM noted that, because the Committee had not yet begun considering the second round of periodic reports, it had no established procedure for following up on such communications. It would be useful to consider the procedures in use in the other treaty bodies, while at the same time taking into consideration the fact that relatively few countries had become States parties to the Convention. That would probably mean that it would be more useful to adopt a somewhat less ambitious approach than the other treaty bodies. While he endorsed the solution proposed by Ms. Cubias Medina, it might also be possible, instead of considering the communication to be an integral part of the second periodic report, to simply take it into consideration, and assign the country rapporteur the task of maintaining informal contacts with the representatives of Mexico.

37. The CHAIRPERSON said that he was unsure whether the Committee should follow up on communications such as the one sent by the Government of Mexico by considering them as integral parts of subsequent periodic reports. He suggested that the issue should be discussed in a private meeting, to establish a precedent for how to deal with such matters.

38. It was so decided.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION

Interactive dialogue with non-governmental organizations on the initial report of Azerbaijan
(CMW/C/AZE/1)

39. Mr. MAMMADOV (Citizens' Labour Rights Protection League) said that, while Azerbaijan had initially been a country of origin of migrant workers, rapid economic development in recent years had led to it becoming a destination and transit country for migrant workers. According to unofficial estimates, there were over 100,000 migrant workers in Azerbaijan, the majority of them illegal; most of them were ethnic Azerbaijanis from neighbouring Georgia. However, work permits had only been issued to 4,400 migrant workers.

40. The President of Azerbaijan had issued a decree creating a "one-stop shop" for foreign nationals and stateless persons wishing to work in Azerbaijan. Previously, migrants had been obliged to apply to many different authorities for permits and registration, but now had only to apply to the State migration service for regularization. Despite that improvement, however, illegal migration was still a serious problem in Azerbaijan, and illegal migrants - who depended directly on their employers - could be deported at any time. In addition, illegal migrants and their family members had no access to education or proper medical care, as most were not registered in their place of residence. The illegal migrants who had work were employed in the informal sector. Fortunately, no instances of acts of xenophobia against foreign nationals or criminal acts for ethnic, religious or racial reasons had been recorded in Azerbaijan, which demonstrated that Azerbaijanis had a tolerant attitude towards migrants.

41. The global economic crisis had recently created problems in the Azerbaijani labour market. The rate of unemployment in the country had risen to over 10 per cent, largely because Azerbaijani migrant workers were returning to the country after losing their jobs abroad. Workers from poorer countries were also entering Azerbaijan to work in the informal sector.

42. In a setback for migrant workers, the Government had increased the cost of an individual work permit from around US\$ 55 to around US\$ 1,200, a sum which represented half of the annual income of the average migrant worker in Azerbaijan.

43. In response to a question from the Chairperson, he explained that his organization dealt with labour rights and therefore only with migrant workers, and not migrants in general. It provided legal assistance to migrant workers in the form of advice, documents to help them obtain individual work permits, and help in accessing medical treatment and education.

44. Mr. EL-BORAI requested further information on the increased cost of individual work permits and on the number of persons employed in the informal sector.

45. Mr. SEVIM asked for clarification of the definition of a migrant under Azerbaijani legislation, which seemed to contain contradictory provisions. Noting that the NGO report made available to the Committee by the Citizens' Labour Rights Protection League stated that 4,400 migrants were registered in Azerbaijan as of the end of 2008, he said that he was aware that more than 20,000 Turkish nationals alone lived in Azerbaijan. He also noted that the report indicated that more than 100,000 migrants from Georgia were living in Azerbaijan. He requested

information on how such unofficial data were obtained. Lastly, he remarked that it seemed apparent from both the NGO report and the report submitted by the State party that illegal migrants in Azerbaijan did not enjoy all of the rights guaranteed under the Convention.

46. Mr. KARIYAWASAM asked whether any provision had been made either by the authorities or private organizations to help reintegrate the large numbers of Azerbaijani migrants who had recently returned to the country. He also requested information on the difficulties faced by returning migrant workers.

47. Mr. BRILLANTES asked for details of any serious violations of the rights of migrant workers and their families, so that the Committee could base its recommendations to Azerbaijan on specific cases. He also asked how prevalent such violations were.

48. Mr. MAMMADOV (Citizens' Labour Rights Protection League) said, in response to Mr. El-Borai's question, that the Government had decided to increase the cost of an individual visa arbitrarily. There was no economic justification for the increase: migrant workers working for domestic companies were earning only around US\$ 200-300 per month.

49. In response to Mr. Sevim's question, he confirmed that there were discrepancies in the Azerbaijani legislation related to migrant workers. For example, under the Migrant Workers Act, a migrant worker was required to enter on a work visa, but foreign nationals and stateless persons could in fact obtain only an entry visa initially, not a work visa. They had to apply for a work permit at a later date. The introduction of the "one-stop shop" was designed to enable migrants to complete all the necessary formalities in one place, and had been welcomed by NGOs in the country.

50. In response to the question concerning the number of illegal migrants in Azerbaijan, he said that, while many Turkish nationals lived and worked in the country, a number were entrepreneurs and therefore not considered to be migrant workers: only around 2,000 Turkish nationals had an individual work permit. With regard to the overall number of migrants in Azerbaijan, he said that past estimates had placed the number of illegal migrants from neighbouring Georgia at 150,000, although since Azerbaijani independence some of those migrants had taken Azerbaijani citizenship, while others had returned to Georgia. His organization had collected data on the number of illegal migrants from various sources, including the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the International Organization for Migration and annual NGO reports. While the figure quoted of 100,000 was not definitive, there were certainly no fewer than 100,000 migrant workers overall.

51. With regard to Azerbaijani workers abroad, some estimates indicated that, until recently, over 2.5 million Azerbaijani citizens had been employed abroad, mainly in the Russian Federation but also in Turkey and other neighbouring countries. A number of those workers had now returned to Azerbaijan. While no special provision had been made for their return, they were able to use State and private employment agencies to seek work.

52. Ms. JAVADOVA (Education on Human Rights), responding to Mr. Brillantes' question, said that migrant workers' rights were violated during the visa application process, which was neither well-regulated nor transparent. Waiting times were sometimes artificially long for preliminary consultations, and delays in receiving visas meant that some migrants were issued

with up to two temporary three-month visas while they waited. Migrants had no access to legal redress before the courts, meaning that, if they encountered problems with their employer, they could be deported from Azerbaijan without being able to seek a remedy before the courts. Even where a case came before the courts, the migrant was not represented by counsel or informed when judgement was passed.

53. Mr. MAMMADOV (Citizens' Labour Rights Protection League) said that the borders of Azerbaijan were easy to cross for nationals of the Russian Federation, Georgia and Central Asian countries. Some foreign nationals or stateless persons arrived from those countries on tourist or guest visas and then remained in the country as informal workers. Estimates put the figure of informal sector workers at 50 or even 60 per cent of all workers, which made it difficult to determine the country's true labour needs.

54. The CHAIRPERSON thanked the representatives of the NGOs for the information provided, which would be taken into account when the Committee considered the initial report of Azerbaijan.

The meeting rose at 12.30 p.m.